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Attorneys for Plaintiffs
ELIAS HEREDIA, VIRGINIA BURGUENO,
RANDY KIRK and CLARENCE STONE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELIAS HEREDIA, VIRGINIA
BURGUENO, RANDY KIRK and
CLARENCE STONE

Plaintiffs,

v.

SANTA CLARA COUNTY, a
governmental corporation formed under the
laws of the State of California, THE
SANTA CLARA COUNTY BOARD OF
SUPERVISORS, JESSE DURAZO, in his
official capacity as the Registrar of Voters
for Santa Clara County, and DOES 1
through 25, inclusive

Defendants,

and

MARY DAVEY, DENNIS KENNEDY,
and PEOPLE FOR LAND AND
NATURE,

Defendants-Intervenors.

CASE NO. C-06-04718 RMW HRL
ORDER REJECTING
JOINT STIPULATION TO STAY ACTION
PENDING DECISION OF THE *EN BANC*
COURT IN *PADILLA v. LEVER*

1 WHEREAS, on or about August 4, 2006, Plaintiffs Elias Heredia, Virginia Burgueno,
2 Randy Kirk, and Clarence Stone (hereinafter collectively, "Plaintiffs") filed an action for
3 Declaratory and Injunctive Relief against Santa Clara County, the Santa Clara County Board of
4 Supervisors, and Jesse Durazo, in his official capacity as the Registrar of Voters for Santa Clara
5 County (hereinafter collectively, "Defendants") challenging petitions circulated to qualify the
6 Initiative for Conservation of Hillside, Ranchlands, and Agricultural Lands (the "Initiative") for
7 the November 7, 2006 ballot under section 203 of the Voting Rights Act.

8 WHEREAS, on or about August 15, 2006 Plaintiffs and Defendants stipulated to the
9 intervention of Mary Davcy and Dennis Kennedy, two proponents of the Initiative, and People for
10 Land and Nature ("PLAN"), an organization that drafted, sponsored, and circulated for signature
11 the Initiative petition, in the lawsuit (hereinafter collectively "Defendant-Intervenors").

12 WHEREAS, the Ninth Circuit had previously held that section 203 applied to privately-
13 circulated recall petitions in California, *Padilla v. Lever*, 429 F.3d 910, 922-24 (9th Cir. 2005),
14 but subsequently took the case *en banc*, 446 F.3d 922 (Apr. 20, 2006), and separately ordered the
15 original opinion withdrawn, 446 F.3d 963 (Apr. 28, 2006).

16 WHEREAS, oral argument before the *en banc* court took place in the *Padilla* case on
17 June 22, 2006, and the matter is still under submission.

18 WHEREAS, Plaintiffs' filed a Motion for Preliminary Injunction seeking an order
19 enjoining Defendants from further processing, certifying, adopting and/or submitting the
20 Initiative to the voters in the County until the Initiative petitions are re-submitted and re-
21 circulated in multiple languages under the Voting Rights Act of 1965;

22 WHEREAS, on or about September 1, 2006, the Court issued an Order Denying
23 Plaintiffs' Motion for Preliminary Injunction without prejudice to Plaintiffs' moving for
24 reconsideration following the Ninth Circuit's ruling in the *Padilla* case.

25 NOW, THEREFORE, IT IS HEREBY STIPULATED, by and between Plaintiffs,
26 Defendants, and Defendant-Intervenors, through their respective undersigned counsel, that:

27 1. Pending a decision by the Ninth Circuit *en banc* court in the *Padilla* case, this
28 litigation shall be stayed in its entirety, including, but not limited to, all answers and responsive

pleadings, all law and motion and case management proceedings, all alternative dispute resolution and meet and confer obligations, all initial disclosures and other discovery obligations, and any and all other obligations under the Federal Rules of Civil Procedure and the Civil Local Rules.

2. Plaintiffs shall serve a Notice of Decision on Defendants and Defendant-Intervenors within ten (10) days after the *en banc* court issues a written decision in the *Padilla* case, and shall notify the Court of same within the same time period in a letter copied to all counsel.

3. The stay shall be lifted as of the date Plaintiffs serve a Notice of Decision.

4. Responsive pleadings to Plaintiffs' Complaint for Declaratory and Injunctive Relief shall be due within ten (10) days after service of the Notice of Decision.

5. The Initial Case Management Conference scheduled for November 3, 2006 shall be continued until sixty (60) days after Plaintiffs serve the Notice of Decision; Plaintiffs shall request that the Court reschedule the Initial Case Management Conference in its letter notifying the Court that the Notice of Decision has been served and that the stay has been lifted.

Dated: September 18, 2006

HOPKINS & CARLEY
A Law Corporation

By: 

Jay M. Ross
Attorneys for Plaintiffs
ELIAS HEREDIA, VIRGINIA
BURGUENO, RANDY KIRK and
CLARENCE STONE

Dated: September 18, 2006

SANTA CLARA COUNTY COUNSEL

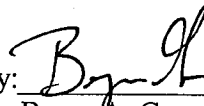
By: 

John L. Winchester, III, Deputy County
Counsel
Attorneys for Defendants
SANTA CLARA COUNTY, SANTA
CLARA COUNTY BOARD OF
SUPERVISORS, AND JESSE DURAZO

Signatures Continue on Following Page

1 Dated: September 18, 2006

STRUMWASSER & WOOCHEER LLP

2
3 By: 

4 Bryce A. Gee
5 Attorneys for Defendant-Intervenors
6 MARY DAVEY, DENNIS KENNEDY,
and PLAN

7 ~~PURSUANT TO STIPULATION, IT IS SO ORDERED.~~

8 The stipulation is rejected as moot. The Ninth Circuit has issued its opinion
9 in *Padilla v. Lever*, __ F.3d __, 2006 WL 2671059 (Sept. 19, 2006) (*en banc*).

10 Dated: 9/20/06



11 Hon. Ronald Whyte
12 U.S. District Court Judge
13 Northern District of California
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